

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JULIA DELAFUENTE
Plaintiff

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V.

Civil Action No. _____

**FIESTA MART, LLC and FIESTA
MART, INC., Individually and d/b/a
FIESTA MART, INC. #28**
Defendant

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NOTICE OF REMOVAL

**TO: THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF TEXAS**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441 and 1332, Defendant Fiesta Mart, LLC (“Fiesta Mart”) (incorrectly also sued as Fiesta Mart Inc., Individually and d/b/a Fiesta Mart, Inc. #28), by and through its undersigned attorneys, gives notice of removal of the above-captioned action from the 189TH Judicial District Court, Harris County, Texas, to the United States District Court for the Southern District of Texas, Houston Division. In support of this *Notice of Removal* (this “Notice”), Defendant Fiesta Mart, LLC further states that:

I. INTRODUCTION

1. On or about July 7, 2021, Plaintiff JULIA DELAFUENTE commenced the above-captioned action against Fiesta Mart, LLC through his filing of *Plaintiff's Original Petition* (the “Petition”) in the 189TH Judicial District Court, Harris County, Texas, captioned as *Julia Delafuente v. Fiesta Mart, LLC and Fiesta Mart, Inc., Individually and d/b/a Fiesta Mart, Inc.* #28, Cause No. 2021-40659. On or about July 19, 2021, Fiesta Mart, LLC was served with Citation and a copy of the Petition. This lawsuit is a civil action within the meaning of the Acts of Congress, relating to the removal of civil actions. *See* 28 U.S.C. §§ 1441, 1446.

2. This Notice is filed timely, pursuant to 28 U.S.C. § 1446(b), because it is filed within thirty (30) days of July 19, 2021, the date on which Fiesta Mart, LLC was served with a copy of the Petition. No previous notice of removal has been filed or made with this Court for the relief sought herein.

II. BASIS FOR REMOVAL

3. Removal is proper under 28 U.S.C. § 1441. It is a civil action brought in state court and the District Courts of the United States have original jurisdiction over this action under 28 U.S.C. § 1332, since the plaintiff and the defendant are diverse in citizenship. This action is removable to this Court pursuant to the provisions of 28 U.S.C. §1441(b) because Plaintiff is a citizen of the State of Texas. Defendant Fiesta Mart LLC (incorrectly also sued as Fiesta Mart Inc., Individually and d/b/a Fiesta Mart, Inc. #28) is the proper Defendant for the claims asserted in this case. Although Defendant Fiesta Mart, LLC, is a limited liability company organized under the laws of Texas, its sole member is Bodega Latina Corp., a Delaware corporation with its principal place of business, or its “nerve center” in California. Defendant Fiesta Mart, LLC’s citizenship as an LLC is determine by the citizenship of its members.¹ A corporation, such as Bodega Latina Corp., is deemed to be a “citizen” of the state where it maintains its principal place of business (its “nerve center”) and the state of its incorporation.² Therefore, Defendant is a citizen of the states of Delaware and California, the principal place of business and the state of incorporation of Fiesta Mart, LLC’s sole member, Bodega Latina Corp.

4. The amount in controversy in this action, exclusive of interest and costs, is over Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00). *See Plaintiff’s Original Petition, Paragraph IX.*

¹ See e.g., *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008).

² See §1332©(1); see also, *Hertz Corp. v. Friend*, 559 U.S. 77, 130 S.Ct. 1181, 1185-86 (2010).

5. The United States District Court for the Southern District of Texas, embraces Harris County, the place where the state court action was filed, and is pending in the 189th Judicial District Court, Harris County, Texas. This statement is not meant as a waiver of any argument that venue is improper in the location in which the state court action was filed, but merely demonstrates the propriety of removing the action to this federal judicial district.

6. All pleadings, process, orders, served upon Defendant in the state court action are attached to this Notice as Exhibit "A" as required by 28 U.S.C. § 1446(a). No other motions are pending before the state court.

7. Defendant will promptly file a copy of this Notice with the clerk of the state court in which the action is pending.

III. REQUEST FOR JURY TRIAL

8. Defendant hereby demands a trial by jury in accordance with the provisions of FED. R. CIV. P. 38.

WHEREFORE, PREMISES CONSIDERED, Defendant Fiesta Mart, LLC, respectfully requests that this action be immediately and entirely removed upon filing of this Notice of Removal to the United States District Court for the Southern District of Texas, Houston Division, and for such other and further relief to which they may show themselves to be justly entitled in equity or law.

Dated: August 17, 2021.

Respectfully Submitted,

/s/ *Jeff C. Wright*

JEFF C. WRIGHT

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that on this the 17th day of August 2021, a true and correct copy of the foregoing Notice of Removal was filed electronically and served on counsel of record:

David K. Mestemaker
Norman L. Straub
Jonathan B. Zumwalt
Mestemaker, Straub & Zumwalt
3100 Timmons Lane, Suite 455
Houston, TX 77027

/s/ *JEFF C. WRIGHT*

JEFF C. WRIGHT